

United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union No. 198, AFL-CIO, CLC (Stone and Webster Engineering Corporation) and Earnest Ford. Case 15-CB-3973

October 31, 1995

DECISION AND ORDER

BY MEMBERS BROWNING, COHEN, AND
TRUESDALE

On July 20, 1995, Administrative Law Judge Robert C. Batson issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions¹ and briefs and has decided to affirm the judge's rulings, findings,² and conclusions and to adopt the recommended Order.³

AMENDED REMEDY

Having found that the Respondent has violated Section 8(b)(1)(A) and (2) of the Act, we shall order that the Respondent cease and desist from such conduct and take affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent unlawfully denied Earnest Ford referral to Stone & Webster Engineering Corporation, we shall order that the Respondent make him whole for any loss of earnings suffered as a result of this unlawful conduct by paying him backpay equal to the amount of wages that he would have earned had he not been unlawfully denied referral to Stone & Webster Engineering Corporation since March 31, 1994, less net interim earnings. Backpay and interest is to be computed in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² We agree with the judge's that Respondent Local 198 violated Sec. 8(b)(1)(A) and (2) by refusing to accept for referral and refusing to refer Earnest Ford (a member of Local 60) to the Employer on March 31, 1994. In arriving at this finding, the judge also found that Respondent Local 198 designated certain officers of Local 60 as its agent for a certain limited purpose. We emphasize that Local 60 was neither a named respondent nor otherwise found liable here.

³ Consistent with the complaint allegations, we shall modify the judge's recommended remedy to provide backpay only for the consequential loss of work with Stone & Webster Engineering Corporation.

leave to compliance proceedings the determination of the nature and extent of Ford's employment opportunities at Stone & Webster Engineering Corporation after March 31, 1994, the date it failed to refer Ford.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union No. 198, AFL-CIO, CLC, its officers, agents, and representatives, shall take the action set forth in the Order.

Andrea J. Goetze, Esq. and *S. L. Hightower, Esq.*, for the General Counsel.

Louis C. Robein, Esq. (Robein, Urann, & Lurye), of Metairie, Louisiana, for the Respondent.

DECISION

STATEMENT OF THE CASE

ROBERT C. BATSON, Administrative Law Judge. This case was heard by me at Baton Rouge, Louisiana, on May 22, 1995. The charge was filed by Earnest Ford, an individual, on April 15, 1995. The complaint and notice of hearing was issued on August 31, 1994,¹ by the Acting Regional Director for Region 15 of the National Labor Relations Board (the Board), pursuant to the National Labor Relations Act (the Act), on August 31, 1994, alleging that the Respondent Union, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union No. 198, AFL-CIO, CLC (Local 198 or Respondent), had violated Section 8(b)(1)(A) and (2) of the Act, on March 31, by failing and refusing to register for referral and to refer Earnest Ford for employment with Stone & Webster Engineering Corporation (the Employer), because he had worked a nonunion job in Respondent's jurisdiction and for reasons other than failure to tender the periodic dues and the initiation fee uniformly required for membership in the Union. It is further alleged that these acts attempted cause the employer to discriminate against its Employees in violation of Section 8(a)(3) of the Act. The charge and complaint were timely served upon Respondent. The Respondent's answer to the complaint admits all procedural allegations, but denies that it violated the Act as alleged. On May 19, 1995, an amendment to the complaint was issued alleging that Jerry McManus and Charles Mouledous, officials of Respondent's sister Local 60, were acting as agents of Respondent on March 31. Respondent denied this allegation.

All parties were represented by counsel and were afforded full opportunity to present all relevant testimony and evidence, make oral arguments on the record, and to file posttrial briefs. Counsel for the General Counsel filed a brief. The Respondent did not. On consideration of the entire

¹ All dates are in 1994 unless otherwise indicated.

record including oral arguments and the posttrial brief, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all material times Stone & Webster Engineering Corporation was a corporation with an office and place of business located at St. Francisville, Louisiana (the jobsite), and is engaged as a general contractor in the construction industry. During the 12-month period ending July 31, in the conduct of its business purchased and received at the jobsite goods and materials valued in excess of \$50,000 from points located outside the State of Louisiana. The complaint alleges, the answer admits, the evidence establishes, and I find that it was at material times here an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The complaint alleges, the answer admits, the evidence establishes, and I find that the Union was a labor organization within the meaning of Section 8(a)(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

Most of the underlying facts in this case are not in dispute. The complaint alleges and Respondent admits that Richard Breaud, business agent, and Louis LeBlanc, financial secretary of Respondent, are agents of Respondent. However, Respondent denies that Jerry McManus, business agent of Local 60, and Charles Mouledous, president and business agent of Local 60, were acting as agents of Respondent during the time of the relevant events here. Local 60 is located in New Orleans, Louisiana, and Local 198 is located at Baton Rouge, Louisiana, approximately 60 miles from New Orleans.

Earnest Ford, the Charging Party here, has been a member in good standing of Local 60 for more than 20 years. He attends the hiring hall calls at Local 60, Monday through Friday at 7:30 a.m. when he is out of work and registers in the out-of-work log for referral.

The Employer, Stone & Webster, a general contractor in the construction industry, has a contract with Entergy Corporation to act as general contractor for the modification of certain systems and to perform work in connection with refueling outages at the River Bend Nuclear Power Plant located at St. Francisville, Louisiana. In the performance of this contract, the Employer employs various crafts of employees including pipefitters. The pipefitters at the jobsite are represented by the Local 198. The Employer's operations at the jobsite are under the direction of Patrick Richter, project manager.

The Employer, is a party to a collective-bargaining agreement known as the General President's Project Maintenance Agreement (hereinafter Agreement) which governs its relationship with Respondent Local 198. The agreement contains provisions regarding the Employer's obligation to employ pipefitters. More specifically, the agreement addresses referrals and hiring at article 3. (G.C. Exh. 4.)

In pertinent part the collective-bargaining agreement, section III, provides as follows:

ARTICLE III: UNION SECURITY AND REFERRAL

SECTION I: The Unions are recognized by the Contractors as a source of employment referrals. The appropriate Unions will be contacted except as provided below.

SECTION III: The above shall not restrict the Contractor from soliciting and hiring qualified personnel from any other source, provided the Unions are unable to fulfill manpower requirements within twenty-four (24) hours, emergencies excluded.

The Employer and the Respondent agree that the contract only allowed the Employer to hire outside the Respondent's hiring hall if the Respondent failed to supply the requested number of pipefitters and other crafts in its jurisdiction within a 24-hour period.

The Employer and the Respondent admit their practice regarding the hiring of pipefitters on the jobsite. Whenever the Employer needed to hire pipefitters Richter, the Employer's jobsite project manager, called the Respondent requesting a number of pipefitters, and then followed up the telephone call with a letter. pipefitters referred to the Employer would supply referral slips from Respondent. Richter testified that the Employer only hired pipefitters referred by Respondent, and did not hire pipefitters referred from Local 60. Richter testified that the Employer has never had to rely on any other source for pipefitters to work an outage for the Employer at the jobsite. Richter asserted, that the Employer has never had to hire pipefitters "off the street."

The relevant events here occurred in late March. Project Manager Patrick Richter testified that he was "manning up" for a refueling outage at the River Bend Nuclear Station at which time his need for craftsmen supplied by Local 198 and other unions might rise from about 45 employees to 400 or more. To fulfill this obligation, in late March he telephoned Local 198 and requested 50 pipefitters to report on April 4. This telephonic request was followed by a letter dated March 29, 1994, to Local 198 Financial Secretary Louis LaBlanc from Richter confirming the order for 50 pipefitters and designating the racial and gender percentages in accordance with its equal employment opportunities program. (G.C. Exh. 6)

On Thursday, March 31, Local 60 received a request for as many pipefitters as it could provide to Local 198 to work on the refueling outage at the River Bend project commencing Monday, April 4. Both Local 60 President and Business Agent Charles Mouledous and Business Agent Jerry McManus were present and managing the referrals from the hiring hall on that date. It appears that on that date there were 29 pipefitters signed up on "out of work list" for referral, including the Charging Party here, Earnest Ford. While there is some conflict between the testimony of Ford and pipe fitter Ronnie Gooden who testified in support of Ford and what he was told at Local 60 about his request for referral to Local 198, and that of McManus and Mouledous as to which of them made the "call out" for the job on that date, I credit Mouledous and McManus that Mouledous made the "call out" and handled the referrals. I believe that Ford and Gooden were mistaken and confused when they testified that it was McManus who made the "call out" and had the communications with Local 198 Business Agent Richard Breaud.

As noted above, I find that Local 198 Business Agent Breaud called Mouldous with the request for pipefitters for the River Bend job. Indeed Mouldous testified that Breaud asked for “pipefitters, welders, plumbers—whoever.” Mouldous then went into the hall and told the members there that he had a job in Baton Rouge that needed people and told them approximately how long the job was expected to last, the rate of pay, hours, et cetera. He then advised that anyone interested to come up to the table and give him their name and social security number.² Fifteen to 20 of the men signed up for referral on that date, including Earnest Ford, supplied this information indicating an interest in working the job. (Tr. 124, 125.)

After acquiring the names and information on all those interested, Mouldous returned to his office and called Richard Breaud and supplied same to him. Breaud asked him to hold on for a minute and upon returning Breaud said, “Don’t send Ford.” Mouldous testified that he was a little hazy about why, rather than Louis LeBlanc had said he did not want Ford working out of that Local. (Tr. 126.) Mouldous said he could not remember if LaBlanc said why. He also testified that Ford was and had been a member in good standing in Local 60 for more than 15 years and he was not aware of any charges or problems with him.

Mouldous then called Ford into his office and asked Ford if he had any problems with Local 198 and told him to save himself a trip up to Baton Rouge, that the man had said they wouldn’t accept him. He told Ford he was just trying to save him a ride up there. In response to Mouldous inquiry of problems Ford might have with Local 198, Ford told him it was an “old scar” that went back to a time Local 198 had asked him to leave a job and he refused.³ On cross-examination Mouldous testified that he was just trying to save Ford a trip up there but finally told him that if he wanted to he could go on up there and try to get his business straightened out. Ford did not go to Local 198. All the pipefitters referred by Local 60 were hired by Stone & Webster for the River Bend job.

Ford’s version, substantially corroborated by Gooden, does not differ significantly from that of Mouldous, except that Ford and Gooden had mistakenly believed that McManus had made the “call out.” Ford testified that McManus had told him they did not want him up at Local 198 and to talk to Charlie Mouldous.⁴ It appears that Ford was under the impression that McManus had told him Louis LeBlanc did not want him at Local 198 because he had worked a non-union job in the jurisdiction of Local 198. McManus also appeared to support the fact that it had been Mouldous who made the “call out” on March 31.

In substance it is the foregoing facts upon which the General Counsel alleges a violation of the Act, that is that Respondent refused to refer Ford for reasons other than failure to tender the periodic dues and the initiation fee uniformly required for membership.

The record reveals two separate incidents involving Ford and Local 198 which might explain why Ford was rejected

by Local 198. The first was in the spring of 1992 when Ford had been referred by Local 60 to Local 198 for a job in the jurisdiction of Local 198. When members were referred between these sister locals it appears they do not need a “travelers card” but merely a referral notification by the respective Locals. Apparently the referral in 1992 was for work with the Employer here. In any event Ford was working primarily with members of Local 198. When the job began winding down either Breaud or Louis LeBlanc asked Jerry McManus to ask Ford to quit the job to avoid layoff of members of Local 198. McManus relayed this request to Ford who told him that because he had illness in the family he could not quit because he would not be eligible for unemployment compensation, but that he would be eligible for unemployment compensation if he took a layoff in a reduction in force so that he could draw such compensation. Ford was one of the last employees to be laid off from that job after Local 198’s steward had also been laid off.

The other incident occurred in June 1993, when Ford was brought up on internal union charges by a rank-and-file member of Local 198 alleging that Ford had worked a non-union job in Respondent’s jurisdiction. A hearing on that charge was held on June 7 by the executive board and reported to the membership at a regular meeting. Neither the member bringing the charges or Ford appeared for the hearing. Accordingly, by letter dated June 11, 1993, LeBlanc notified Ford that the executive board had found him innocent. (G.C. Exh. 3.)

As noted, the Respondent did not file a posttrial brief. However, apparently anticipating the General Counsel’s argument that Ford had not worked out of Local 198 since he had been charged with working a nonunion job in Respondent’s jurisdiction. Respondent called Jeff Armstrong. Armstrong had been employed by Local 198 as an organizer since February. In early February, Ford was at the Local 198 hiring hall and Armstrong testified that when there was no other work available Ford approached him and volunteered to participate in the “salting” campaign at Fluor Daniel Incorporated which he was trying to organize. Ford testified in substance that he was approached by Armstrong to assist in the campaign. Ford went to Fluor Daniel and made application but was not hired. Armstrong testified that he told Ford to put “voluntary union organizer” on his application. However, he testified his notes indicated he told Ford not to designate himself as a union organizer. However, Respondent knew full well that Fluor Daniel was not going to hire any union adherents.

In any event, on March 31, Armstrong on behalf of Local 198 filed a charge alleging 8(a)(1) and (3) violations against Fluor Daniel for refusing to hire seven individuals, including Ford. (R. Exh. 1.)

III. ANALYSIS AND CONCLUSIONS

A. Exclusive Hiring Hall

It is well settled that an exclusive hiring hall is created when the union and the employer enter into and abide by an agreement like, or similar, to the General President’s Project Maintenance Agreement here in effect. Richter testified that he had never hired employees other than through referral by Local 198. See *Plumbers Local 803 (Bechtel Constructors)*, 309 NLRB 1034 (1992), and cases cited therein. The Board

² It appears from the context that Local 198 would have to supply this information to Stone & Webster as early as possible so that a security check could be run as was required for the job.

³ This incident will be discussed more fully below.

⁴ Even if this were the case it would not alter the fact that he did talk to Mouldous.

has also found that without respect to any contractual language, the past practice of the parties demonstrates an exclusive hiring hall arrangement because of the Employer's consistency in hiring exclusively from those applicants referred by a union. See *Iron Workers Local 118 (California Erectors)*, 309 NLRB 808 (1992).

Accordingly, the Respondent and the Employer have maintained and operated an exclusive hiring hall and Respondent owes and owed a duty of fair representation to applicants using its hiring hall.

B. Local 60's Agency Status of Respondent

During the hearing I granted the General Counsel's motion to amend the complaint to allege that President and Business Agent Charles Mouldous and Business Agent Jerry McManus of Local 60 were agents of Respondent Local 198 with respect to the relevant events here. The Respondent denied this allegation.

It is well settled that the Board recognizes the general agency principal that an entity or individual may be authorized to act as a special or limited purpose agent, i.e. an agent authorized to conduct a single transaction or series of transactions which does not involve continuity of service.⁵

In some respects the facts here are similar to those in *Plumbers Local 513*, 264 NLRB 415, 416 (1982), where the Respondent's business agent was asked in person by one sister local's business manager and by telephone by another sister local's business manager to provide the sister locals with employees for the sister locals' contractors. The Respondent's business agent then contacted his members to determine if they were willing to travel to work out of another local. The members who expressed a willingness were told to report to the respective sister locals in order to be referred to a job. In Local 513 the Board found that Respondent's business agent in making the requested referral was acting as an agent of the sister locals.

In Local 513 the Board stated:

Thus, the Board has adopted the fundamental rule of agency that "authority to act as an agent in a given manner will be implied whenever the conduct of the principal is such as to show that he actually intended to confer the authority."

Accordingly, I find that when Respondent's admitted agent, Breaud, telephoned Local 60 President and Business Agent Charles Mouldous requesting him to provide pipefitters from Local 60's hiring hall to aid Respondent in the performance of its duty in the operation of its exclusive hiring hall agreement with the employer, and directing any pipefitters referred to report to Respondent's hiring hall for referral by it to the employer the Respondent expressly designated Local 60 as its agent for that purpose. Thus, Respondent owed a duty of fair representation to all members of Local 60 available and willing to accept referral to the employer. Ford was one of those members.

⁵ See *Davlan Engineering*, 283 NLRB 803 (1987), citing Restatement 2d, Agency § 3(2) (1958).

C. Respondent's Refusal to Accept Ford for Referral

It is well settled as the Board found in *Iron Workers Local 118 (California Erectors)*, 309 NLRB 808 (1992), that a party attempting to demonstrate that a union has violated its duty of fair representation by departing from hiring hall rules and thereby affecting employment opportunities need not show invidious or unfair motivation. "Such departures, absent some justification related to the efficient operation of the hiring hall, are arbitrary actions and inherently breach the duty of fair representation owed to all hiring hall user and violates the Act."

Ford was a member in good standing of Local 60. He was available for work on March 31, 1994, and he was qualified to accept the referral from Respondent's hiring hall. Therefore, Breaud's direction to Mouldous not to send Ford as an applicant from Local 60 for referral to the Employer, a statement which was conveyed to Ford, was not refuted, as Breaud was not called to testify and, therefore, remains undenied and is arbitrary and in violation of Respondent's duty of fair representation.

The Respondent had an established procedure for procuring applicants from its sister local, Local 60. It is admitted that Respondent accepted every Local 60 member who responded to the "call out" with the exception of Ford. Respondent failed to follow established procedures in Ford's case. Mouldous read Breaud the list of names and social security numbers of applicants from Local 60 for referral to the Employer through Respondent, and Breaud told Mouldous not to send Ford for referral to the Employer. Accordingly, on the facts in the record it is found that Respondent violated Section 8(b)(1)(A) and (2) of the Act because of arbitrarily failing to follow its established system for referrals.

In view of the undenied and credited testimony of Mouldous that Breaud told him Local 198 would not accept Ford for referral to the employer, and Mouldous so advised Ford, it would have been futile for Ford to have reported to Local 198 for referral.

In summary Ford was discriminated against in violation of Section 8(b)(1)(A) and (2) because the Respondent refused to accept him for referral to the Employer.

CONCLUSIONS OF LAW

1. Stone & Webster Engineering Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union No. 198, AFL-CIO, CLC are labor organizations within the meaning of Section 2(5) of the Act.

3. Local 198 and the Employer were parties to an exclusive hiring hall agreement at all times herein relevant.

4. By Local 198's refusal to accept for referral and its refusal to refer Earnest Ford to employment with the Employer on March 31, 1994, Respondent has violated Section 8(b)(1)(A) and (2) of the Act as alleged in the complaint; and the Respondent Union has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(b)(1)(A) and (2) of the Act as set forth above, it will be recommended that it be ordered to cease and desist from such conduct and take affirmative action designed to effectuate the policies of the Act.

Having found that Respondent unlawfully denied consideration for referral and referral of Earnest Ford it shall be ordered to make him whole for any loss of earnings suffered as a result of the discrimination against him by payment to him of sums of money equal to that which he normally would have earned as wages from the date of discrimination against them until such time as Respondent properly refers him to employment pursuant to the lawful operation of its referral system, less net earnings during such period. Backpay and interest thereon is to be computed in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).⁶

Respondent will be ordered to operate its referral system in a nondiscriminatory manner.

On the basis of these findings of fact and conclusions of law and on the entire record in this case, I issue the following recommended⁷

ORDER

The Respondent, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union No. 198, AFL-CIO, CLC, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing and refusing to register for referral its member in good standing, Earnest Ford, or any other member in good standing in accordance with its exclusive hiring hall agreement with Stone & Webster Engineering Corporation, or any other employer with whom it has an exclusive hiring hall agreement.

(b) In any like or related manner breaching its duty of fair representation for all its members and members of Local 60 or other sister locals in the operation of its hiring hall.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Maintain and operate its hiring hall and job referral system in a nondiscriminatory manner.

(b) Make Earnest Ford whole for any loss of earnings suffered as a result of the discrimination against him by pay-

⁶Under *New Horizons*, interest is computed at the "short term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621. Interest accrued before January 1, 1987 (the effective date of the amendment) shall be computed as in *Florida Steel Corp.*, 281 NLRB 651 (1977).

⁷If no exceptions are filed as provided by 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ment to him of sums of money and other benefits equal to that which he would have earned but for the Respondent's discrimination against him in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post in conspicuous places of its business office and meeting places copies of the attached notice marked "Appendix."⁸ Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

⁸If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS

POSTED BY THE ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid and protection

To choose not to engage in any of these concerted activities

WE WILL NOT fail or refuse to register for referral our member in good standing, Earnest Ford, or any other member in good standing in accordance with our exclusive hiring hall agreement with Stone & Webster Engineering Corporation or any other employer with whom we have an exclusive hiring hall agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make Earnest Ford whole for any loss of earnings and other benefits he may have suffered as a result of our discrimination against him.

WE WILL maintain and operate our hiring hall job referral system in a nondiscriminatory manner.

UNITED ASSOCIATION OF JOURNEYMEN AND
APPRENTICES OF THE PLUMBING AND PIPE
FITTING INDUSTRY OF THE UNITED STATES
AND CANADA, LOCAL UNION NO. 198, AFL-
CIO, CLC